

FEDERAL ELECTION COMMISSION,  
Washington, D.C., July 30, 1975.

Hon. JAMES O. EASTLAND,  
President Pro Tempore, U.S. Senate,  
Washington, D.C.

DEAR MR. PRESIDENT: In accordance with Section 316(c) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 438c, the Federal Election Commission transmits herewith a proposed regulation pertaining to accounts used to support the activities of Federal officeholders.

The proposed regulation serves several purposes, all related to the Commission's mandate to secure compliance with the disclosure and contribution and expenditure limitations of the 1971 Act as amended. It requires the establishment of a system of accounts which differentiates between funds spent under 39 U.S.C. Section 3210, relating to the use of the frank, and funds otherwise contributed or expended to support the activities of Federal officeholders, other than appropriated funds. It requires full disclosure of contributions to and expenditures from each account. It affirms the applicability of the limitations of 18 U.S.C. Sections 608, 610, 611, 613, 614 and 615, to contributions and expenditures of funds supporting the activities of Federal officeholders, save for funds designated for use and used under 39 U.S.C. Section 3210, and funds appropriated by the Congress for legislative activities. The regulation also partially qualifies the uses to which excess campaign funds may be put.

A unanimous Commission believes that the proposed regulation represents both a fair and a necessary effort to fulfill the Commission's obligation to cause the fullest possible disclosure of election-related contributions and expenditures, and to assure observance of the limitations on contributions and expenditures which are at the heart of the 1971 Act, as amended.

The Commission includes with this letter three attachments. Attachment 1 is the text of the proposed regulation, and Attachments 2 and 3 are, respectively, the explanation and justification of the proposed regulation, as required by the Act.

Sincerely yours,

THOMAS B. CURTIS, *Chairman.*

Attachments.

#### ATTACHMENT

#### PART 113—OFFICE ACCOUNTS AND FRANKING ACCOUNTS; EXCESS CAMPAIGN CONTRIBUTIONS

- § 113.1 Definitions.
- § 113.2 Contribution and Expenditure Limitations and Prohibitions.
- § 113.3 Deposits of Funds into Office and Franking Accounts.
- § 113.4 Reports of Franking Accounts.
- § 113.5 Reports of Office Accounts.
- § 113.6 Excess Campaign Funds.

##### § 113.1 Definitions

(a) *Commission*.—"Commission" means the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, (202) 382-5162.

(b) *Excess campaign funds*.—"Excess campaign funds" means the surplus of campaign receipts, including all contributions, sales and income, over campaign expenditures.

(c) *Franking account*.—"Franking account" means an account which is used exclusively for the purpose of receiving and expending funds pursuant to 39 U.S.C. § 3210. Such funds may not be transferred to any other account or political committee.

(d) *Office account*.—"Office account" means an account other than a franking account which is used for the purpose of supporting the activities of a federal officeholder.

(e) *Principal campaign committee*.—"Principal campaign committee" means the political committee designated by a candidate as his or her principal campaign committee pursuant to 2 U.S.C. § 432(f)(1).

(f) *Legislative activities*.—"Legislative activities" means those activities which are paid for solely out of appropriations approved by either or both houses of Congress, for use by members and members-elect of Congress. Such appropriations include but are not limited to those for salaries, constituent services, stationery, travel and general office expenses.

##### § 113.2 Contribution and Expenditure Limitations and Prohibitions

(a) All funds including but not limited to gifts, loans, advances, credits and deposits of money or any other thing of value which are received or expended by an incumbent or elected holder of a federal office for the purpose of supporting his or her activities as a holder of such office shall be considered contributions or expenditures subject to the limitations of 18 U.S.C. §§ 608, 610, 611, 613, 614, and 615.

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(b) Notwithstanding subsection (a) of this section the limitations of 18 U.S.C. § 608 do not apply. (1) when a contributor states in writing that the contribution is to be used exclusively for expenditures made pursuant to 39 U.S.C. § 3210, provided that such contributions shall be deposited in a franking account, or (2) when expenditures are made from funds provided for legislative activities.

**§ 113.3 Deposits of Funds into Office and Franking Accounts**

Except for funds appropriated for legislative activities, all funds received by or on behalf of a federal officeholder for the purpose of supporting his or her activities as a holder of such office shall be deposited into one of the following accounts:

- (a) an account of the officeholder's principal campaign committee, pursuant to 2 U.S.C. § 437b, or
- (b) a franking account, or
- (c) an office account, pursuant to 2 U.S.C. § 437b.

**§ 113.4 Reports of Franking Accounts**

(a) All individuals having franking accounts shall file reports with the Commission on April 10 and October 10 of each year.

(b) The April 10 report shall include all receipts and expenditures made from October 1 of the prior year to March 31 of each year.

The October 10 report shall include all receipts and expenditures made from April 1 to September 30 of each year. These reporting obligations shall be effective prospectively on the effective date of this regulation (designated Part 113).

(c) Such reports shall include the name, address, occupations and principal place of business of all persons making contributions aggregating in excess of \$100 during the reporting period. Such reports shall include the name and address of all persons receiving expenditures aggregating more than \$100 during the reporting period.

(d) Forms will be provided by the Commission to implement this section.

**§ 113.5 Reports of Office Accounts**

(a) All individuals having office accounts shall report as if such account is a political committee, and on forms provided for that purpose, pursuant to 2 U.S.C. § 434.

(b) If the officeholder, former officeholder, or candidate has designated a principal campaign committee such individual shall file the reports required by this section with such principal campaign committee.

(c) If the officeholder, former officeholder, or candidate has not designated a principal campaign committee such individual shall file the reports required by this section with the Commission.

**§ 113.6 Excess Campaign Funds**

(a) A principal campaign committee may transfer excess campaign funds to an office account, a franking account, an organization described in 26 U.S.C. § 170(c), or for any other lawful purpose.

(b) Excess campaign funds expended on or before December 31 in an election year will be considered expenditures for the last election of that year. Excess campaign funds not expended or transferred by December 31 of an election year will be considered expenditures for

the next election when they are expended or transferred. Except for transfers to a franking account, such expenditures, whether made before or after December 31 of an election year, are subject to the expenditure limitations of 18 U.S.C. 608(c).

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FEDERAL ELECTION COMMISSION,  
Washington, D.C., September 30, 1975.

Hon. JAMES O. EASTLAND,  
*President Pro Tempore,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. PRESIDENT: In accordance with § 316(c) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 438, the Federal Election Commission transmits herewith a proposed regulation pertaining to accounts used to support the activities of Federal officeholders.

On July 31, 1975, the Commission submitted to you an earlier version of this same regulation. At the same time the previous version was submitted for publication to the *Federal Register* and appeared for public comment on August 5, 1975. In the normal course, the Commission would propose to publish a draft regulation for public comment for a period of 30 days prior to adopting the regulation in final form and submitting it to the Congress pursuant to 2 U.S.C. 438(c). In the case of the previously submitted regulation, however, the Commission was responding to an urgently expressed desire for guidance

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<sup>1</sup> "Bearing the Costs of Government" by the Honorable Wayne L. Hays, *Washington Post* at A14 (July 19, 1975).

on the part of numerous Members of both the United States Senate and the House of Representatives. At the time of that submission, the Commission had received 22 requests from Members of Congress for formal advisory opinions pursuant to 2 U.S.C. 437f. Additionally, the Commission had received numerous informal communications with respect to the subject of constituent services and newsletter funds.

In the course of the comment period following publication of the previous regulation in the *Federal Register*, the Commission received further communications from interested and/or affected persons, and in addition was asked to hold open hearings with regard to subject matter of the regulation. The Commission was pleased to comply with the latter request, and on September 16 and 17, 1975 hearings were held at the United States Court of Claims. The Commission found that the testimony submitted at the hearings was most useful, and justified reconsideration by the Commission of the previously submitted regulation. The result of the ensuing deliberations is the revised regulation submitted herewith.

As revised, the regulation is distinguished from the previous submission in two principal ways. In the case of Members of the United States Senate, the period during which expenditures from office accounts are presumed to be campaign-related is reduced from six to the two calendar years commencing January 3 of the year prior to the Senator's election year. And in the case of a Member of the House of Representatives, the period during which such expenditures are presumed to be campaign-related is reduced to the year of the election. I would stress that the regulation creates two presumptions with respect to expenditures made from office accounts, and that both presumptions are rebuttable. Thus, an expenditure from an office account by a Member of the House of Representatives is presumed not to be for the purpose of influencing an election when it is made in the year prior to the year of the general election, but in a given case evidence may be adduced which demonstrates that the expenditure is in fact for that purpose, and accordingly made during the course of an election year by such a Member is presumed to be for the purpose of influencing the general election, but in a given case evidence may be adduced which demonstrates clearly that the expenditure has no such purpose, in which case the presumption would be rebutted and the expenditure would not be charged against the incumbent's expenditure limits under 18 U.S.C. § 608.

Beyond these distinctions, the revised regulation substantively parallels the regulation submitted to the Congress on July 31, 1975. As with that earlier regulation, the purposes of the present submission all relate to the Commission's mandate to secure compliance with the disclosure and contribution and expenditure limitations of the 1971 Act, as amended. The revised regulation provides for the establishment of a system of accounts in order to differentiate between funds spent under 2 U.S.C. § 3210, relating to the use of a frank, and funds otherwise contributed or expended to support the activities of Federal officeholders, other than appropriated funds. It requires full disclosure of contributions to and expenditures from each account. It affirms the applicability of the limitations of 18 U.S.C. §§ 608, 610, 611, 613, 614 and 615, to contributions and expenditures of funds supporting the activities of Federal officeholders, save for funds des-

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ignated for use and used under 39 U.S.C. § 3210, and funds appropriated by the Congress for legislative activity. The regulation also partially qualifies the use to which excess campaign funds may be put.

The Commission has unanimously adopted this revised regulation, believing it to be a fair and reasonable effort to fulfill the Commission's obligation to cause the fullest possible disclosure of election-related contributions and expenditures, and to assure observance of the limitations on contributions and expenditures which are the heart of the 1971 Act as amended.

The Commission includes with this letter three (3) attachments. Attachment 1 is the text of the revised proposed regulation, and Attachments 2 and 3 are, respectively, the explanation and justification of the proposed regulation, as required by the Act.

In closing, I wish to emphasize that the Commission has now reached a stage of organization where it will as a matter of course follow the procedure outlined above regarding the submission of regulations to the Congress. The Commission will in all cases first publish a draft regulation for public comment, and allow the full comment period to run. In the appropriate instance, the Commission will hold hearings with regard to the proposed regulations during that period. When the period for public comment closes, the Commission will adopt the regulation in final form with whatever revision is deemed desirable on the basis of the public comment and any testimony received. The regulation thus adopted will be transmitted to the Congress in the same fashion in which we transmit the regulation today. The Commission expresses its hope that a procedure may be followed thereafter by the respective Houses of the Congress whereunder the proposed regulations may be acted upon by affirmative vote, in lieu of each House awaiting the close of 30 legislative days without having disapproved a proposal.

I look forward to further opportunity to discuss this procedure with you.

Sincerely yours,

THOMAS B. CURTIS, *Chairman.*

Attachments.

#### ATTACHMENT 1

#### PART 113—OFFICE ACCOUNTS; EXCESS CAMPAIGN FUNDS

##### § 113.1 Definition.

##### § 113.2 Expenditures—Limitations.

##### § 113.3 Contributions—Prohibitions and Limitations.

##### § 113.4 Deposits of Funds Contributed to a holder of Federal office.

##### § 113.5 Excess Campaign Funds.

##### § 113.6 Reports of § 113.4(b) Accounts—Office Accounts.

##### § 113.7 Reports of § 113.4(c) Accounts.

#### § 113.1 Definitions.—When used in this part—

(a) *Commission*.—"Commission" means the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463, (202) 382-5162.

(b) *Funds contributed*.—"Funds contributed" means all funds including but not limited to gifts, loans, advances, credits or deposits of money or any other thing of value, which are contributed for the purpose of supporting the activities of a holder of Federal office, except for funds appropriated by Congress.

(c) *Office Account*.—"Office account" means an account established exclusively for the purpose of supporting the activities of a holder of Federal office and which is not the account of an officeholder's principal campaign committee, an account used exclusively for activities pursuant to 29 U.S.C. § 3210, or an account used for funds appropriated by Congress.

(d) *Excess campaign funds*.—"Excess campaign funds" means the surplus of campaign receipts, including all contributions, sales and income, over campaign expenditures.

(e) *Principal campaign committee*.—"Principal campaign committee" means the political committee pursuant to 2 U.S.C. § 432(f)(1).

### § 113.2 *Expenditures—Limitations*

(a) All funds expended by or on behalf of a Member of the Senate from funds contributed to a Member or Member-elect of the Senate for the purpose of supporting a Member's or Member-elect's activities as a holder of Federal office, excluding funds expended pursuant to 39 U.S.C. § 3210, shall be presumed to be expenditures subject to the limitations of 18 U.S.C. §§ 608(a) and (c) during the two calendar years preceding the expiration of the Senator's term; provided that the limitations of 18 U.S.C. §§ 608(a) and (c) shall be presumed to be inapplicable to the expenditure of such funds at any other time during the Senator's term.

(b) All funds expended by or on behalf of a Member of the House of Representatives from funds contributed to a Member or Member-elect of the House of Representatives for the purpose of supporting a Member's or Member-elect's activities as a holder of Federal office, excluding expenditures made pursuant to 39 U.S.C. § 3210, shall be presumed to be expenditures subject to the limitations of 18 U.S.C. §§ 608(a) and (c) during the one calendar year preceding the expiration of the Representative's term; provided that the limitations of 18 U.S.C. §§ 608(a) and (c) shall be presumed to be inapplicable to the expenditure of such funds at any other time during the Representative's term.

(c) The presumptions of § 113.2(a) and § 113.2(b) shall be rebuttable.

### § 113.3 *Contributions—Prohibitions and Limitations*

(a) All funds contributed, including but not limited to gifts, loans, advances, credits or deposits of money or any other thing of value, which are contributed to a Member or Member-elect of Congress for the purpose of supporting the Member's or Member-elect's activities as a holder of Federal office shall be considered contributions subject to the prohibitions of 18 U.S.C. §§ 610, 611, 613, 614 and 615.

(b) All funds contributed, including but not limited to gifts, loans, advances, credits or deposits of money or any other thing of value, which are contributed to a Member or Member-elect of Congress for the purpose of supporting the Member's or Member-elect's activities as a holder of Federal office shall be considered contributions subject to the limitations of 18 U.S.C. § 608(b); provided that the limitations of 18 U.S.C. § 608(b) shall not apply when a contributor states in writing that the contribution is to be used exclusively for expenditures made pursuant to 39 U.S.C. § 3210.

*§ 113.4 Deposits of Funds Contributed to a Holder of Federal Office*

All funds contributed, including but not limited to gifts, loans, advances, credits or deposits of money or any other thing of value, which are contributed to a Member or Member-elect of Congress for the purpose of supporting the Member's or Member-elect's activities as a holder of Federal office shall be deposited into one of the following accounts:

- (a) an account of the officeholder's principal campaign committee pursuant to 2 U.S.C. § 437b, or
- (b) an account used exclusively for the purpose of supporting a Member's or Member-elect's activities as a holder of Federal office, pursuant to 2 U.S.C. § 437b, or
- (c) an account used exclusively for activities pursuant to 39 U.S.C. § 3210.

*§ 113.5 Excess Campaign Funds*

(a) Excess campaign funds expended prior to January 3 of the year after an election shall be considered expenditures incurred with respect to the last election.

(b) The expenditure limitations of 18 U.S.C. § 608 shall not apply to transfers of excess campaign funds by a political committee or candidate to an account described in § 113.4 or to an organization described in 26 U.S.C. § 170(c).

*§ 113.6 Reports of § 113.4(b) Accounts-Office Accounts*

(a) All individuals having § 113.4(b) accounts shall report as if such account is a political committee, and on forms provided for that purpose, pursuant to 2 U.S.C. § 434.

(b) If the officeholder, former officeholder, or candidate has not designated a principal campaign committee such individual shall file the reports required by this section with the Commission.

(c) If the officeholder, former officeholder, or candidate has designated a principal campaign committee such individual shall file the reports required by this section with such principal campaign committee.

*§ 113.7 Reports of § 113.4(c) Accounts*

(a) All Members, Members-elect and former Members of Congress having § 113.4(c) accounts shall file reports with the Commission on April 10 and October 10 of each year.

(b) The April 10 report shall include all receipts and expenditures made from October 1 of the prior year to March 31 of each year. The October 10 report shall include all receipts and expenditures made from April 1 to September 30 of each year. These reporting obligations shall be effective prospectively on the effective date of this regulation (designated Part 113).

(c) Such reports shall include the name, address, occupation and principal place of business of all persons making contributions aggregating in excess of \$100 during the reporting period. Such reports shall include the name and address of all persons receiving expenditures aggregating more than \$100 during the reporting period.

(d) Forms will be provided by the Commission to implement this section.